746E

Nos. 05-908 & 05-915

FILED
OCT 10 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES

PARENTS INVOLVED IN COMMUNITY SCHOOLS,
Petitioner,

v.

SEATTLE SCHOOL DISTRICT NO. 1, *et al.*,
Respondents.

CRYSTAL D. MEREDITH, Custodial Parent
and Next Friend of Joshua Ryan McDonald,
Petitioner,

v.

JEFFERSON COUNTY BOARD OF EDUCATION, *et al.*,
Respondents.

On Writs of Certiorari to the United States Courts of Appeal for the Ninth and Sixth Circuits

---

BRIEF *AMICI CURIAE* OF MEDIA & TELECOMMUNICATION COMPANIES IN SUPPORT OF RESPONDENTS

Elizabeth G. Taylor
Counsel of Record
Susan Dudley Klaff
Zuckerman Spaeder LLP
1800 M Street, N.W.
Washington, D.C. 20036
(202) 778-1800
Counsel for Amici Curiae

October 10, 2006

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20001

LIST OF *AMICI CURIAE*

Amici curiae include the following media and telecommunications companies:

Access.1 Communications Corporation
The Bakewell Company
BET Networks, a division of Viacom International Inc.
Border Media Partners LLC
Bustos Media, LLC
Diamond Broadcasting
Emmis Communications Corporation
Granite Broadcasting Corporation
Hispanic Broadcasters of Philadelphia, LLC
Inner City Broadcasting Corporation
ION Media Networks, Inc.
KB Prime Media LLC
La Favorita Broadcasting, Inc.
LIN Television Corporation
Millennium Digital Media, LLC
MTV Networks, a division of Viacom International Inc.
Multicultural Radio Broadcasting Inc.
Norsan Group Inc.
Perry Broadcasting Company Inc.
Post-Newsweek Stations, Inc.
QUALCOMM Incorporated
Radio One, Inc.
Viacom International Inc.
ZGS Broadcast Holdings, Inc.

INTEREST OF *AMICI*[1]

Amici are media and communications companies – broadcast, cable, digital, print and telecommunications providers whose workforces range from six to more than eleven thousand employees. They employ college graduates as well as a significant number of workers whose highest level of education is high school or below. As disseminators of ideas and information – the bedrock of our democracy – *amici* occupy a unique and particularly important role among American businesses.

Amici have in common their commitment to one fundamental proposition: that it is vitally important to their future – and to that of all American businesses – that there be a well-educated, diverse pool of potential employees who have not learned the racial biases that are fostered in segregated schools and who have instead learned the skills of valuing and communicating with people of different backgrounds and skin colors.

The benefits to *amici* of hiring employees from diverse backgrounds who have the skills necessary to work together are substantial and quantifiable. There is positive friction generated when individuals from different disciplines, cultures and thinking styles come together to develop creative ideas. Members of such heterogeneous teams are more innovative, have different approaches to problem-solving and are more likely to question routine business practices. In

---

[1] This brief is filed with the written consent of all parties. No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *Amici* or its counsel, make a monetary contribution to the preparation or submission of this brief. *Amici* appreciate the extensive assistance of their researcher, Dr. Dean Colby of the University of Colorado.

addition, to survive in today's competitive global economy, *amici* must respond to the needs and interests of increasingly diverse customers and advertisers. As a result, *amici* recognize that employees skilled in forming cross-cultural relationships provide a key competitive advantage, especially in the creative fields of media and telecommunications.

Amici can say with certainty that a heterogeneous workforce, with employees who have experience dealing with and thriving in a multicultural environment, is crucial to the success of their companies. *Amici* also know from experience that while on-the-job diversity training is useful, it is no substitute for lessons learned early in life. Developing the skills of cross-cultural communication and tolerance is like learning a language – it is much easier for the young. And the lessons learned and attitudes formed at a young age last a lifetime.

Amici urge the Court to find that it is a government interest – and a truly compelling one – that America's young people, the workforce of tomorrow, be educated in schools that prepare them to work together productively in the diverse, multicultural world in which they will live. A ruling that racial diversity in K-12 public education is *not* a compelling government interest would send a devastating message to Americans and to the world – that as a nation, we believe that we have done enough with respect to racial integration and are prepared to accept the resegregation of our schools, regardless of the detrimental effects on our communities and our workforces. Should such resegregation be allowed to occur, *amici* would be significantly hindered in their mission – and, in many cases, obligation – to disseminate ideas and information in a way that is meaningful to the increasingly diverse population of our country. And

both American businesses and our democracy would be significantly poorer for the loss.

TABLE OF CONTENTS

LIST OF *AMICI CURIAE* i

INTEREST OF *AMICI* ii

TABLE OF CONTENTS iv

TABLE OF CITED AUTHORITIES vi

SUMMARY OF ARGUMENT 1

ARGUMENT 2

I. America's Businesses Need A Diverse Workforce That Has Learned The Skills Of Cross-Cultural Communication And Tolerance 2

A. A Heterogeneous Workforce Is More Creative And Better At Problem-Solving Than A Homogeneous Workforce 2

B. A Heterogeneous Workforce Offers An Advantage In Marketing And Customer Relations, Both Domestically And Globally 4

C. Contributing To An Effective Heterogeneous Work Force Requires Cross-Cultural Communication Skills And Tolerance That Must Be Learned 7

D. America's Minority Schoolchildren Will Be Essential To The Future Workforces Of America's Businesses 9

II. Integrating K-12 Schools Is A Compelling Interest Because Integrated Schools Teach Skills That American Children And Businesses Need To Succeed In The Future 10

A. Integrated K-12 Schools Teach The Skills Of Cross-Cultural Communication And Tolerance At An Age When Those Skills Are Best Learned 12

B. Integrated K-12 Schools Are Necessary To Ensure Excellence In Our Public School Education 15

III. Forcing Educators To Ignore Race In Making School Assignments Would Exact A Tremendous Toll On The Future Of American Businesses And Democratic Institutions 18

CONCLUSION 22

TABLE OF CITED AUTHORITIES

Cases

Board of Educ. of Okla. City Pub. Schs. v. Dowell,
498 U.S. 237(1991) 21

Brown v. Board of Educ.,
347 U.S. 483 (1954) 12

Comfort v. Lynn Sch. Comm.,
418 F.3d 1 (1st Cir. 2005)..... 11, 13, 20

Freeman v. Pitts,
503 U.S. 467 (1992) 20

Grutter v. Bollinger,
539 U.S. 306 (2003) ..... *passim*

Johnson v. California,
543 U.S. 499 (2005) 9

Plyler v. Doe,
457 U.S. 202 (1982) 12

Washington v. Seattle Sch. Dist. No. 1,
458 U.S. 457 (1982) 15, 21

Other Authorities

Michael J. Anderson, *Race as a Factor in K-12 Student Assignment Plans: Balancing the Promise of Brown with the Modern Realities of Strict Scrutiny*, 54 Cath. U. L. Rev. 961 (2005)..... 13

Daniel Benjamin & Steven Simon, *The Next Attack* (2005) 9

Ben S. Bernanke, Chairman of the Bd. of Governors of the Fed. Reserve Sys., Remarks at the Fed. Reserve Bank of Kansas City's Thirtieth Annual Economic Symposium: *Global Economic Integration: What's New & What's Not?* (Aug. 25, 2006), *available at* http://www.federalreserve.gov/boarddocs/speeches/2006/20060825/default.htm#fn5 5

Business Roundtable, Press Release, Education Leaders Give No Child Left Behind a Grade of "A", but Cite Implementation Problems (Dec. 3, 2003) (on file with author), *available at* http://www.businessroundtable.org//taskForces/taskforce/document.aspx?qs=6D55BF159F849514481138A74EA1851159169FEB56C36B7 9

The Career Advancement Subcomm. of the FCC's Advisory Comm. on Diversity for Commc'ns in the Digital Age, *Workplace Diversity: A Global Necessity & an Ongoing Commitment* (2004) [hereinafter FCC's Advisory Comm.] (emphasis added), *available at* http://www.fcc.gov/DiversityFAC/040614/recommend/Best Practices Report.doc 5, 6

John J. Castellani, President, Business Roundtable, Testimony Before the Comm. on Educ. & the Workforce of the U.S. House of Representatives: *The Changing Nature of the Economy: The Critical Roles of Education & Innovation in Creating Jobs & Opportunity* (March 11, 2004), *available at* http://www.businessroundtable.org//taskForces/taskforce/

document.aspx?qs=6D75BF159F849514481138A77EC1851159169FEB56339B2 9

Corporate Executive Bd., Corporate Leadership Council, *The Business Case for Diversity* (May, 2003), *available through www.corporateleadershipcouncil.com* 3, 5, 7-9

Taylor Cox, Jr., *Cultural Diversity in Organizations: Theory Research & Practice* (1993)..... 3

Jennifer Cheeseman Day with Amie Jamieson, U.S. Census Bureau, *Census 2000 Brief, School Enrollment: 2000* (2003), *available at* http://www.census.gov/prod/2003pubs/c2kbr-26.pdf 16

Suzanne E. Dutton et al., *Racial Identity of Children in Integrated, Predominantly White, & Black Schools*, 138 J. Soc. Psychol. 41 (1998) 13, 14

Robin J. Ely & David A. Thomas, *Cultural Diversity at Work: The Moderating Effects of Work Group Perspectives on Diversity*, 46 Admin. Sci. Q. 229 (2001)..... 8

Erica Frankenberg et al., The Civil Rights Project, Harvard Univ., *A Multiracial Society with Segregated Schools: Are We Losing the Dream?* (2003)..... 12, 16, 17, 19

Richard A. Guzzo & Marcus W. Dickson, *Teams in Organizations: Recent Research on Performance & Effectiveness*, 47 Ann. Rev. Psychol. 307 (1996)..... 3

Jonna L. Holland & James W. Gentry, *The Impact of Cultural Symbols on Advertising Effectiveness: A Theory of Intercultural Accommodation, in Advances in Consumer Research* (Merrie Brucks & Deborah J. MacInnis eds., 1997) 5

John Iceland et al., U.S. Census Bureau, *Census 2000 Special Reports, Racial & Ethnic Residential Segregation in the United States: 1980-2000* (2002), *available at* http://www.census.gov/hhes/www/housing/housing_patterns/pdf/censr-3.pdf 18

Michael Kurlaender & John T. Yun, The Civil Rights Project, Harvard Univ., *The Impact of Racial & Ethnic Diversity on Educational Outcomes: Lynn, MA School District* (2002) 8

Heidi McGlothlin & Melanie Killen, *Intergroup Attitudes of European American Children Attending Ethnically Homogenous Schools*, 77 Child Dev. 1375 (2006) 14

Julie F. Mead, *Conscious Use of Race as a Voluntary Means to Educational Ends in Elementary & Secondary Education: A Legal Argument Derived from Recent Judicial Decisions*, 8 Mich. J. Race & L. 63 (2002) 13, 14, 19, 21

Frances J. Milliken & Luis L. Martins, *Searching for Common Threads: Understanding the Multiple Effects of Diversity in Organizational Groups*, 21 Acad. Mgmt. Rev. 402 (1996) 7

NAACP Legal Defense & Educ. Fund et al., *Looking to the Future: Voluntary K-12 School Integration, a Manual for Parents, Educators, & Advocates* (2005) 8, 11, 14, 16-18

Gary Orfield & Chungmei Lee, The Civil Rights Project, Harvard Univ., *Why Segregation Matters: Poverty & Educational Inequality* (2005) 16

Robert B. Reich, *The Work of Nations: Preparing Ourselves for 21st Century Capitalism* (1991) 2

James E. Ryan, *Voluntary Integration: Asking the Right Questions*, 67 Ohio St. L.J. 327 (2006) 11, 15, 19-21

Debbie Treise & Elaine Wagner, *Learning to Create Ad Strategies for Different Target Audiences*, 54 Journalism & Mass Commc'ns Educator 42 (1999) 6

U.S. Dept. of Educ., Nat'l Ctr. for Educ. Statistics, *The Condition of Education, Concentration of Enrollment by Race/Ethnicity and Poverty* (2006), *available at* http://nces.ed.gov/programs/coe/2006/section1/indicator06.asp 17

SUMMARY OF ARGUMENT

Racial integration of elementary and secondary schools is a compelling interest because it is crucial to the future of our democracy and our ability to compete in the global economy. Educators, social scientists and courts agree that exposing students to peers from different racial and cultural backgrounds provides significant educational and social benefits that are vital to the success of the businesses of this nation. To thrive in today's changing marketplace, American businesses must cultivate heterogeneous workforces and appeal to an increasingly diverse customer base. An effective heterogeneous workforce requires employees who possess skills in cross-cultural communication and tolerance that are best learned in elementary and secondary schools. In addition, because minorities will make up an increasing percentage of tomorrow's workforce, American businesses have a vested interest in improving the lagging educational achievement of minority students.

Forcing educators to ignore race in making school assignments would do a tremendous disservice to our students and our country. The racial and ethnic diversity of our nation's schoolchildren is a significant national asset that must not be wasted or ignored. But we cannot profit from this diversity without first addressing the profound challenges presented by having students of different backgrounds unevenly distributed within geographic districts. This Court must not tie the hands of educators who aim to address these challenges directly and achieve the goal that clearly is in the national interest – educating children in racially and culturally diverse public schools. To do so would exact an enormous toll on the future of American businesses and American democracy.

ARGUMENT

I. America's Businesses Need A Diverse Workforce That Has Learned The Skills Of Cross-Cultural Communication And Tolerance.

The business case for workplace diversity is so thoroughly documented that it cannot be disputed. Innovative companies deliberately create heterogeneous workforces – workforces that include people from different racial and cultural backgrounds, of different genders and with different life experiences – because those differences result in varied approaches to problem-solving. In addition, the dramatically increasing market power of minorities requires that companies' workforces reflect the diversity of their customers.

A. A Heterogeneous Workforce Is More Creative And Better At Problem-Solving Than A Homogeneous Workforce.

In 1991, Robert Reich predicted that "in the emerging global economy, the only true competitive advantage lies in skill in solving, identifying and brokering new problems." Robert B. Reich, *The Work of Nations: Preparing Ourselves for 21st Century Capitalism* 184 (1991). His prediction was even more accurate than he could have anticipated.

As this Court recognized in *Grutter v. Bollinger*, 539 U.S. 306 (2003), American businesses have made workforce diversity an increasing priority. *Id.* at 330 ("major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, culture, ideas and

viewpoints") (citing Brief for 3M et al. as *Amicus Curiae* at 5; Brief for Gen. Motors Corp. as *Amicus Curiae* at 3-4).

One of the primary forces behind this phenomenon is the desire of those businesses to benefit from the innovation that derives from a heterogeneous workforce. Modern companies "deliberately establish heterogeneous teams to 'create a marketplace of ideas, recognizing that a multiplicity of points of view need to be brought to bear on a problem.'" Taylor Cox, Jr., *Cultural Diversity in Organizations: Theory Research & Practice* 32 (1993) (quoting R.M. Kanter, *The Change Masters* 167 (1983)); *see also* Corporate Executive Bd., Corporate Leadership Council, *The Business Case for Diversity* 3 (2003) ("Diverse backgrounds and experiences provide a catalyst for increased innovation, more so than a homogeneous staff, as a diverse mix of employees can: challenge long-accepted views; create dynamic environments leading to increased productivity; encourage a wider array of ideas and solutions; and offer varied perspectives."). Most important, the value of heterogeneity for team performance is clearest in the domains of creative and intellective tasks – the tasks that are essential to our country's global competitiveness. Richard A. Guzzo & Marcus W. Dickson, *Teams in Organizations: Recent Research on Performance & Effectiveness*, 47 Ann. Rev. Psychol. 307, 312, 331 (1996); *see also* Cox, *supra*, at 33 (citing P. L. McLeod et al., *Cultural Diversity & Creativity in Small Groups: A Test of the Value-in-Diversity Hypothesis* (Univ. of Mich., Ann Arbor, Working Paper, 1993)) (research shows that ideas produced by ethnically diverse groups were rated an average of 11 percent higher than those of homogeneous groups on both feasibility and overall effectiveness).

B. A Heterogeneous Workforce Offers An Advantage In Marketing And Customer Relations, Both Domestically And Globally.

Companies also have a critical need for effective heterogeneous workforces as a result of the increasing diversity of the domestic and global markets. Domestically, the customer base is changing rapidly. As explained by the Federal Communications Commission's expert advisory body on career advancement:

> The changing demographics of our nation have had a tremendous impact on our country's economy and the way businesses approach their bottom lines. Among Americans 70 and older, the ratio of majority to minority is 5.3 to 1. For Americans below the age of 40, the ratio is 2 to 1. For children under 10, the ratio is 1.5 to 1. Moreover, according to the U.S. Department of Commerce, in the year 2000, minority consumers spent $1.3 trillion in the marketplace. That number will nearly double to $2.5 trillion in the year 2020. *To be competitive, businesses must recognize this trend and take action to invest in and support*

> *the needs of its most important resource – their workforces.*

The Career Advancement Subcomm. of the FCC's Advisory Comm. on Diversity for Commc'ns in the Digital Age, *Workplace Diversity: A Global Necessity & an Ongoing Commitment* 8 (2004) [hereinafter FCC's Advisory Comm.] (emphasis added), *available at* http://www.fcc.gov/DiversityFAC/040614/recommend/Best Practices Report.doc; *see also* Corporate Executive Bd., *supra*, at 4 ("From 2000 to 2045, minority purchasing power is expected to increase from $1.3 to $6.1 trillion."). Statistics regarding the global market are equally compelling. In recent years, global merchandise exports have surged to comprise more than 20 percent of world gross domestic product. Ben S. Bernanke, Chairman of the Bd. of Governors of the Fed. Reserve Sys., Remarks at the Fed. Reserve Bank of Kansas City's Thirtieth Annual Economic Symposium: *Global Economic Integration: What's New & What's Not?* (Aug. 25, 2006), *available at* http://www.federalreserve.gov/boarddocs/speeches/2006 /20060825/default.htm#fn5.

These shifting demographics require companies to serve a market in which members of racial minority groups and overseas customers have significant buying power – making cross-cultural communication skills increasingly valuable in our economy. To respond to these changes, companies need employees with the ability to think across cultural lines. *See* Corporate Executive Bd., *supra*, at 4 ("By reflecting the diversity of a company's base in its workforce, companies are more likely to be sensitive to the needs of specific cultures and lifestyles."); *see also* Jonna L. Holland & James W. Gentry, *The Impact of Cultural Symbols on Advertising Effectiveness: A Theory of Intercultural*

Accommodation, in Advances in Consumer Research 488 (Merrie Brucks & Deborah J. MacInnis eds., 1997) ("As the demographics of the North American market continue to change, and as international marketing becomes increasingly vital to every business, *expertise in communicating with groups of various cultures is becoming an essential marketing skill.*") (emphasis added). As a result, "[s]tudents must broaden their experience and learn to communicate with people who are not like themselves if they hope to get a job in today's changing marketplace." Debbie Treise & Elaine Wagner, *Learning to Create Ad Strategies for Different Target Audiences*, 54 Journalism & Mass Commc'ns Educator 42, 49 (1999).

Media companies are acutely aware of the importance of cultivating effective heterogeneous workforces. In February 2003, the FCC's expert advisory body on career advancement surveyed 20 companies from the broadcast, telecommunications, cable, satellite, Internet and broadband industries, all of which "recognized diversity as an important goal to achieving success in the marketplace." *See* FCC's Advisory Comm., *supra*, at 15. One cable company described as its mission: to "create an environment of inclusion through attracting and retaining top talent who engage in a healthy give and take of ideas, who think, act and react to diverse consumer needs, who foster creativity and innovation and who help achieve our globalization objectives." *Id.*

C. Contributing To An Effective Heterogeneous Work Force Requires Cross-Cultural Communication Skills And Tolerance That Must Be Learned.

To harness the power of more creative, heterogeneous workforces, companies must recognize that such workforces are likely also to be less cohesive than homogeneous groups. *See* Frances J. Milliken & Luis L. Martins, *Searching for Common Threads: Understanding the Multiple Effects of Diversity in Organizational Groups*, 21 Acad. Mgmt. Rev. 402, 403 (1996). As explained in a Corporate Leadership Council report:

> Some individuals are uncomfortable working in diverse environments, which requires sharing work as well as rewards with people unlike themselves. Even for individuals who approach diverse situations with an open mind, research indicates that the actual engagement process is sometimes difficult.

Corporate Executive Bd., *supra*, at 5.

To meet this challenge and thrive in our changing economy, businesses need employees who are skilled in cross-cultural communication and tolerance. Merely hiring a diverse group of individuals will not produce the desired creativity and innovation. Rather, to achieve success as part of a heterogeneous workforce, those individuals must be able

to work and interact effectively with people of different ethnicities and racial groups. *See* Michael Kurlaender & John T. Yun, The Civil Rights Project, Harvard Univ., *The Impact of Racial & Ethnic Diversity on Educational Outcomes: Lynn, MA School District*, 6-7 (2002); NAACP Legal Defense & Educ. Fund et al., *Looking to the Future: Voluntary K-12 School Integration, a Manual for Parents, Educators, & Advocates* 17 (2005); *see also* Corporate Executive Bd., *supra*, at 6 (the most effective communication style does not pretend that there are no differences but values diverse backgrounds and perspectives and discourages exclusion). Otherwise, the hiring companies will not be able to reach their creative potential or respond to the needs of our increasingly multicultural society. Kurlaender & Yun, *supra*, at 6-7.

Similarly, utilizing a diverse workforce to market effectively to minority customers requires much more than simply assigning a minority representative to that audience. In fact, such a strategy generally backfires. Robin J. Ely & David A. Thomas, *Cultural Diversity at Work: The Moderating Effects of Work Group Perspectives on Diversity*, 46 Admin. Sci. Q. 229, 265 (2001) (staffing patterns that matched the racial make-up of the markets served fostered perceptions that white-staffed functions were higher status than those staffed by people of color and created interracial and inter-functional tensions). Instead, to capitalize on a diverse workforce to connect with minority audiences, all employees must be skilled in cross-cultural communication and tolerance.[2] *Id.* at 265, 267.

---

[2] The importance of these skills also is evident in connection with related issues critical to our national security. For example, experts have noted that American Muslims have been less likely than their European counterparts to participate in terrorism because the United States has more successfully integrated Muslims into

D. America's Minority Schoolchildren Will Be Essential To The Future Workforces Of America's Businesses.

Even in those businesses that have not actively cultivated diverse workforces, minorities have begun to make up an increasing percentage of the employees – and that percentage will only continue to grow. Researchers project that as soon as 2009, women and minorities will comprise half of the American workforce. Corporate Executive Bd., *supra*, at 4. Business leaders are therefore acutely aware of the critical role that today's minority children will play in the future of their companies. These leaders also recognize that their companies' success rides on increasing the quality of American education, especially for minority populations. John J. Castellani, President, Business Roundtable, Testimony Before the Comm. on Educ. & the Workforce of the U.S. House of Representatives: *The Changing Nature of the Economy: The Critical Roles of Education & Innovation in Creating Jobs & Opportunity* (March 11, 2004), *available at* http://www.businessroundtable.org//taskForces/taskforce/document.aspx?qs=6D75BF159F849514481138A77EC1851159169FEB56339B2; *see also* Business Roundtable, Press Release, Education Leaders Give No Child Left Behind a Grade of "A", but Cite Implementation Problems (Dec. 3, 2003) (on file with author), *available at* http://www.businessroundtable.org//taskForces/taskforce/document.aspx?qs=6D55BF159F849514481138A74EA1851159

---

mainstream society. *See* Daniel Benjamin & Steven Simon, *The Next Attack* 117-25 (2005); *see also Johnson v. California*, 543 U.S. 499, 507-09 (2005) (racial integration in prisons tends to diffuse racial tensions and prepares inmates for reentry into society).

169FEB56C36B7 (quoting Kati Haycock, Dir. of The Educ. Trust: "'There isn't a community in the country that isn't now aware of the need to do something differently' to help [minority and disabled] children").

II. Integrating K-12 Schools Is A Compelling Interest Because Integrated Schools Teach Skills That American Children And Businesses Need To Succeed In The Future.

The interest in integrating K-12 schools is even more compelling than that articulated by the Court in *Grutter*. In that case, in the context of affirmative action in higher education admissions, the Court recognized a compelling interest in "the educational benefits that flow from student body diversity." 539 U.S. at 330. As the Court explained, those benefits are not limited to the diversity of viewpoints that are shared on a college campus. *Id.* Rather, the benefits include promoting cross-racial understanding, breaking down stereotypes and preparing students to succeed in an increasingly diverse society. *Id.* Thus, the same principle underlies the compelling interests in integrating K-12 schools and in achieving diversity on college campuses: Students benefit socially and academically from learning environments that include peers from different races and cultural backgrounds.

But the two interests are not identical, and the need for students to experience such diverse educational environments is more urgent at the K-12 level. It is in elementary and secondary school that impressionable children form life-long racial attitudes. Those educated in heterogeneous classrooms learn to value people whose skin colors and accents are different from their own. And it is that learned tolerance that

enables them as adults to value the ideas of colleagues unlike themselves and to work together on complex solutions. Furthermore, at the lower school level, racially integrated classrooms can result in dramatic improvement in the achievement of minority students. NAACP et al., *supra*, at 16-19; James E. Ryan, *Voluntary Integration: Asking the Right Questions*, 67 Ohio St. L.J. 327, 337 (2006).

These unsurprising differences between the goals of integrating K-12 schools and achieving broad diversity in higher education do not diminish the extent of the interest in either case. NAACP et al., *supra*, at 29; Ryan, *supra*, at 327, 333, 335, 339-40, 342. For fundamental to any strict scrutiny analysis of race-based governmental action is consideration of the "particular context" and any "relevant differences" that distinguish that context from other uses of race. *Grutter*, 539 U.S. at 327; *see also Comfort v. Lynn Sch. Comm.*, 418 F.3d 1, 16 (1st Cir. 2005) (en banc) (explaining that the focus on racial, rather than viewpoint, diversity at the K-12 level "is the result of contextual differences between higher education, where the emphasis is on the exchange of ideas, and primary education, where the emphasis is on fostering interracial cooperation"). And in the context of elementary and secondary school education, school districts' interest in educating students in racially diverse schools is unquestionably compelling.

A. Integrated K-12 Schools Teach The Skills Of Cross-Cultural Communication And Tolerance At An Age When Those Skills Are Best Learned.

This Court has long viewed public schools as teaching much more than academic fundamentals and playing a major role in "maintaining the fabric of our society." *Plyler v. Doe*, 457 U.S. 202, 221-23 (1982). As the Court stated in *Plyler*:

> We have recognized 'the public schools as the most vital civic institution for the preservation of a democratic system of government' and as the primary vehicle for transmitting 'the values on which our society rests.' . . . Today [education] is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

Id. Similarly, in *Brown v. Board of Education*, 347 U.S. 483 (1954), the Court described our public education system as providing "the very foundation of good citizenship." *Id.* at 493; *see also* Erica Frankenberg et al., The Civil Rights Project, Harvard Univ., *A Multiracial Society with Segregated Schools: Are We Losing the Dream?* 11 (2003) ("When we look at the short-term outcomes of schooling such as test scores, our focus is too narrow and we are severely

underestimating the roles that schools play."). On par with the teaching of academic subject matter, "education for success in a diverse society is not simply something desirable public elementary and secondary schools do; it is why these schools exist." Julie F. Mead, *Conscious Use of Race as a Voluntary Means to Educational Ends in Elementary & Secondary Education: A Legal Argument Derived from Recent Judicial Decisions*, 8 Mich. J. Race & L. 63, 138 (2002).

Public schools are pivotal to society in large part because of their heavy influence during students' most impressionable years. Relevant to the issue before the Court, studies demonstrate that children form strong racial attitudes by late elementary school. *See* Suzanne E. Dutton et al., *Racial Identity of Children in Integrated, Predominantly White, & Black Schools*, 138 J. Soc. Psychol. 41, 42, 50-51 (1998) (children develop and begin to act on prejudice by age eight to 12; most children will have formed strong racial attitudes by late elementary school). For this reason, cross-cultural communication skills and tolerance are best taught when children are young. *See Comfort*, 418 F.3d at 15-16 (citing significant evidence in the record that the benefits of exposure to racial diversity are greater at younger ages and quoting the district court in *Comfort v. Lynn Sch. Comm.*, 283 F. Supp. 2d 328, 356 (D. Mass. 2001): "It is more difficult to teach tolerance to college-age students; the time to do it is when the students are still young, before they are locked into racialized thinking"); Michael J. Anderson, *Race as a Factor In K-12 Student Assignment Plans: Balancing the Promise of Brown with the Modern Realities of Strict Scrutiny*, 54 Cath. U. L. Rev. 961, 987-88 (2005) ("the need for exposure to other races is more urgent in elementary and secondary schools, as the benefits of cross-racial interaction are most profound at younger ages") (citing Dutton et al., *supra*, at 42).

Research also shows that attending integrated K-12 schools makes a significant difference in preventing the development of these early prejudices and teaching a tolerance that carries over into adulthood. Students who attend heterogeneous schools have been found to demonstrate more positive perceptions of peers of other races and a strong level of comfort with diverse classmates. *See* Heidi McGlothlin & Melanie Killen, *Intergroup Attitudes of European American Children Attending Ethnically Homogenous Schools*, 77 Child Dev. 1375, 1383-84 (2006); NAACP et al., *supra*, at 3; *see also* Dutton, *supra*, at 42 (segregated schools lead to lower levels of acceptance of other races and higher levels of racism). In addition children educated in desegregated environments later tend to live and work in more integrated communities. NAACP et al., *supra*, at 17. Conversely, students – and white students in particular – who are isolated in homogenous schools exhibit less tolerance of differences and are later less comfortable in diverse workplaces. *Id.* at 16, 18.

This is because "[s]tudents learn as much from their experiences as they do from what they are told. They can be told that people are equal regardless of race, but when they learn it from their own experience, it becomes a life-long lesson rooted in reality and not mere platitude or an idealistic notion." Mead, *supra*, at 140-41 (citing Brief for Am. Ass'n of Sch. Adm'rs et al. as *Amicus Curiae*, at 11, *Tuttle v. Arlington County Sch. Bd.*, 195 F.3d 698 (4th Cir. 1999)); *see also Grutter*, 539 U.S. at 347 (Scalia, J., dissenting) (the benefit of diversity "is a lesson of life rather than law – essentially the same lesson taught to (or rather learned by, for it cannot be 'taught' in the usual sense) people three feet shorter and twenty years younger than the full-grown adults at

the University of Michigan Law School, in institutions ranging from Boy Scout troops to public-school kindergartens"). Also of critical importance to American businesses and society, for the large percentage of tomorrow's workforce that will not attend college – or might not even complete high school-- high school likely will be the last, and best, opportunity to learn to work side-by-side with peers of other races. *See Grutter*, 539 U.S. at 355 n.3 (Thomas, J., dissenting) ("It must be remembered that the Law School's racial discrimination does nothing for those too poor or uneducated to participate in elite higher education and therefore presents only an illusory solution to the challenges facing our Nation.").

B. Integrated K-12 Schools Are Necessary To Ensure Excellence In Our Public School Education.

Racially integrated schools benefit all children, not just minorities, because all children need to learn the skills necessary to succeed in the diverse, multicultural world that they are entering. *See Washington v. Seattle Sch. Dist. No. 1*, 458 U.S. 457, 472 (1982) ("'[I]t should be equally clear that white as well as negro children benefit from exposure to 'ethnic and racial diversity in the classroom.'"); Dutton et al., *supra*, at 42 ("Racial identity and acceptance are important for all races, especially in this increasingly multiracial society. . . . As a controlled environment, school can play a vital role in improving racial identity, understanding and education."); Ryan, *supra*, at 337 ("racially integrated schools can increase racial tolerance and crossracial understanding, break down stereotypes, and help prepare all students for diverse workplaces").

The Court acknowledged this phenomenon in *Grutter*, noting that "numerous studies show that student body diversity promotes learning outcomes, and 'better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.'" 539 U.S. at 330. Yet, today, the typical white public school student attends a school that is 80 percent white, a statistic that is far out of proportion with the overall representation of white children in public schools. Frankenberg et al., *supra*, at 4. And most blacks and Latinos attend schools in which approximately two-thirds of the students are also black or Latino and more than half of the population is of the student's own race. NAACP et al., *supra*, at 13. Asians, on the other hand, live in the nation's most integrated communities and attend the most integrated schools – and have a college graduation rate almost double the national average. Frankenberg et al., *supra*, at 4.

Integrated schools also are critical to the mission of preparing minority children to fulfill their vital role in the future of American businesses. Research clearly demonstrates that students who attend schools that are predominantly minority are less likely to achieve educational success than those who attend schools that are predominantly white. Overall graduation rates and standardized test scores are significantly lower in high schools that are predominantly minority. Gary Orfield & Chungmei Lee, The Civil Rights Project, Harvard Univ., *Why Segregation Matters: Poverty & Educational Inequality* 5-7 (2005). Among minority students in particular, those in integrated schools not only have lower dropout rates but also perform better on standardized tests than those in predominantly minority schools. Jennifer Cheeseman Day with Amie Jamieson, U.S. Census Bureau, *Census 2000 Brief, School Enrollment: 2000* 6 (2003), *available at* http://www.census.gov/prod/2003pubs/c2kbr-

26.pdf. In addition, attending integrated schools increases minority children's exposure to the networks and resources that provide access to future educational and employment opportunities. *See* Frankenberg et al., *supra*, at 12; NAACP et al., *supra*, at 16, 18. After studying data submitted by virtually all U.S. schools to the Department of Education, researchers at The Civil Rights Project at Harvard University concluded that "[s]egregated schools have much higher concentrations of poverty[3] and other problems and much lower average test scores, levels of student [sic], teacher qualifications, and advanced courses." Frankenberg et al., *supra*, at 11. If forced to continue to attend such segregated schools, a large percentage of today's minority children will not be equipped to participate as effective members of the heterogeneous workforces that are so critical to our nation's economy.[4]

---

[3] About half of all black and Latino children attend schools in which 75 percent or more of the students are poor. In contrast, more than half of all white children attend schools in which 25 percent or fewer of the students are poor. NAACP et al., *supra*, at 13-14 (citing Orfield & Lee, *supra*); *see also* U.S. Dept. of Educ., Nat'l Ctr. for Educ. Statistics, *The Condition of Education, Concentration of Enrollment by Race/Ethnicity and Poverty* (2006), *available at* ttp://nces.ed.gov/programs/coe/2006/section1/indicator 06.asp (according to the most recent statistics, 48 percent of black and 49 percent of Hispanic students are enrolled in schools with the highest measure of poverty, compared with five percent of white students).

[4] Ironically, refusing to enable localities to integrate their schools also would delay the universal hope that "over the next generation's span, progress toward nondiscrimination and genuinely equal opportunity will make it safe to sunset affirmative action." *See Grutter*, 539 U.S. at 346 (Ginsburg, J., concurring) (noting that this goal cannot be realized until more minority students are equipped through high-quality lower school education to meet the admission requirements of selective institutions); *see also* NAACP, *supra*, at 44.

III. Forcing Educators To Ignore Race In Making School Assignments Would Exact A Tremendous Toll On The Future Of American Businesses And Democratic Institutions.

Although educators and business leaders alike look forward to a day when our country is truly color-blind, we are not yet there. *See Grutter*, 539 U.S. at 333 ("Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters."). And until we reach that goal, if we cannot talk about our racial diversity and address it directly as a tremendous potential asset, it will continue to be a tremendous national problem.

Petitioners ignore the lasting significance of race in our country in urging that K-12 educators do not have a compelling interest in integrating their schools because they seek only racial diversity, not the more broadly defined diversity found to be compelling in *Grutter* and *Gratz*. After a period of significant gains in desegregation between the 1960s and the late 1980s, our schools now are becoming more segregated, not less. NAACP et al., *supra*, at 11. Nationwide, more black students attended primarily black schools in 2000 than in 1988. *Id.* In 2000, 31 percent of black students in the South attended majority white schools, the lowest number since 1968. *Id.* And despite some improvement during the last decade, census figures for 2000 still show high levels of residential segregation, especially for blacks. John Iceland et al., U.S. Census Bureau, *Census 2000 Special Reports, Racial and Ethnic Residential Segregation in the United States: 1980-2000* 3-4 (2002), *available at*

http://www.census.gov/hhes/www/housing/housing_patterns/pdf/censr-3.pdf; Frankenberg et al., *supra*, at 4-6, 15-17. That means that if all children attend the public schools closest to their homes, our schools will remain segregated, and few students – minority or white – will receive the benefits of integrated education. Frankenberg et al., *supra*, at 4-6 ("The persisting high levels of residential segregation for blacks and increasing levels for Latinos, as reported in the 2000 Census, indicate that desegregated education will not happen without plans to make it happen."). Nor will these students graduate with the cross-cultural communication skills and tolerance that are so vital to the future success of American businesses.

Petitioners' argument also fails to recognize that the use of race in K-12 student assignments is less troubling, not more so, than the affirmative action plans at issue in *Grutter* and *Gratz*. Unlike in college admissions, in every public school district across the country, each child is guaranteed a place by law. Ryan, *supra*, at 335-36. Thus, the consideration of race at the elementary and secondary school levels does not deprive any child of the opportunity for an education. *Id.*; Mead, *supra*, at 125. This fundamental distinction renders inapplicable direct comparisons to the focus in *Grutter* and *Gratz* on proper considerations for "admissions" programs, through which only a select set of students is granted an opportunity to receive higher education at a state institution. *See Grutter*, 539 U.S. at 333-44 (discussing factors related to competition among applicants and individualized consideration of applicants' qualifications "for [a] seat" in the limited class); Mead, *supra*, at 124-25 (noting that unlike with affirmative action, "no education is denied and no education is delayed" at K-12 schools and explaining that "this difference marks a way to distinguish such "injuries" from those suffered by plaintiffs in [*Adarand*, *Croson*,

Wygant or Bakke]"); Ryan, *supra*, at 336 ("Indeed, although often lumped together, voluntary integration plans at the public school level are not affirmative action plans.").

As recognized by the courts below, because of the nature of K-12 education, local districts cannot effectively integrate America's public schools without considering the number of students of each race in each school. There simply is no other way to accomplish this critical objective. Yet, this direct consideration of race need not be problematic in the Court's strict scrutiny analysis. For just as the compelling interest in integrating K-12 schools differs in some respects from that in achieving broad diversity in higher education, so logically do the constitutionally permissible means of reaching these ends. The First Circuit recently addressed this issue, explaining that

> [u]nlike [in *Gratz* and *Grutter*], the [K-12 integration plan] is designed to achieve racial diversity rather than viewpoint diversity. The only relevant criterion, then, is a student's race; individualized consideration beyond that is irrelevant to the compelling interest.

See Comfort, 418 F.3d at 18.

Furthermore, this Court has long recognized the tradition of local control of public education and school districts' authority to make school assignments to maximize educational benefits – even if that means that students do not attend the schools closest to their homes. *See Freeman v.*

Pitts, 503 U.S. 467, 490 (1992) ("As we have long observed, 'local autonomy of school districts is a vital national tradition.'"); *Board of Educ. of Okla. City Pub. Schs. v. Dowell*, 498 U.S. 237, 248 (1991) ("Local control over the education of children allows citizens to participate in decisionmaking, and allows innovation so that school programs can fit local needs."). For example, in *Washington v. Seattle School District No. 1*, the Court noted that "[t]he question whether to provide an integrated learning environment rather than a system of neighborhood schools surely" was the type of decision that was "firmly committed to the school board's discretion." 458 U.S. at 479-80, (also recognizing the many other educational reasons for assigning a student to a school other than that closest to his or her home). In light of this longstanding and important deference to local control, "courts should respect a local district's conclusion that racially integrated schools are part of its institutional mission and presume that local officials are acting in good faith to achieve that mission." Ryan, *supra*, at 339 (summarizing the Court's history of recognizing local control).

Especially considering the strength of the nation's interest in integrated K-12 schools, this Court should not now prohibit school districts from exercising their assignment authority simply because race is one factor in the process. The costs – and the educational benefits – of segregated schools are the same regardless of whether the schools are segregated by law or by residential demographics. *See* Mead, *supra*, at 136 ("Education's obligation to equip each student for success in a diverse world makes integration a compelling interest, regardless of how the environment came to be as it is today."). For the Court to hold that it is unconstitutional for school officials to make assignments on the basis of race as

part of a voluntary desegregation plan would do great harm to American students, businesses and citizens.

CONCLUSION

Together with the rest of Americans, *amici* look forward to the day when racial prejudice has been eradicated in this country and when race need no longer be a factor in educational or business decisions. But we will never reach that day without a concerted, conscious effort to teach our children at their most impressionable ages to understand and appreciate people of different colors, backgrounds and cultures. These critical values cannot be learned from a book. Rather, to internalize tolerance and master cross-cultural communication, students must interact with peers of other races on a daily basis and in a variety of everyday situations – as is only possible in the K-12 classrooms where they spend the majority of their time.

Thus, the Court must not close the door on local communities that desire to advance multicultural understanding by integrating their public schools. To do so would considerably dim the futures of American businesses vying to compete in an increasingly global economy and would set back our nation's progress toward the goal of achieving a truly color-blind society.

We urge the Court to find that achieving racial diversity in K-12 schools to maximize the educational benefits to all students is a compelling interest – and that it is constitutionally permissible for school officials to use measures aimed directly at minimizing racial imbalance in K-12 school enrollment. Whether or not the particular plans at issue in these cases are found acceptable, the Court must not

hold that the plans fail simply because they acknowledge that racial diversity is the goal and that the only way to measure success in achieving that goal is by considering the number of students of each race throughout the district and in individual schools.

Respectfully submitted,

Elizabeth G. Taylor
Susan Dudley Klaff
Zuckerman Spaeder LLP
1800 M Street N.W., Suite 1000
Washington, DC 20036
(202) 778-1800